





# City of Loma Linda Official Report

Floyd Petersen, Mayor  
Stan Brauer, Mayor pro tempore  
Robert Christman, Councilmember  
Robert Ziprick, Councilmember  
Charles Umeda, Councilmember

COUNCIL AGENDA: May 9, 2006

TO: City Council

VIA: Dennis R. Halloway, City Manager 

FROM:  Deborah Woldruff, AICP, Community Development Director

SUBJECT: SITE LEASE AGREEMENTS BETWEEN THE CITY OF LOMA LINDA AND CINGULAR WIRELESS AND METRO PCS

## **RECOMMENDATION**

The recommendation is that the City Council adopts the Site Lease Agreements between the City and Cingular Wireless and Metro PCS.

## **BACKGROUND**

The proposed Site Lease Agreements are for the requests by aforementioned to mount communications equipment to existing utility towers on three separate locations owned by the City of Loma Linda. Metro PCS is seeking approvals for a co-location on an existing tower at the existing City well site (10500 Richardson Street) and at the City Corp Yard (26000 Barton Road). Cingular Wireless is requesting co-location approval for the utility towers located on the Southern California Edison easement north of Hinckley Street. None of the applicants are proposing to expand the lease areas of the given sites. Only Cingular is proposing the installation of related ground equipment.

## **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) STATUS**

The Site Lease Agreements are exempt from CEQA pursuant to the CEQA Guidelines Section 15303(e), as a Class 3 Categorical Exemption from CEQA, which allows the installation of small new equipment and facilities in small structures.

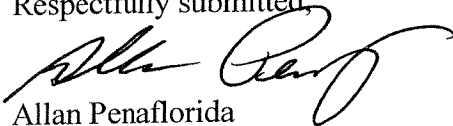
### **ANALYSIS**

Because the three project sites are on City property, site (or ground) lease agreements between the applicants and the City are required to address co-location fees by the individual entities.

### **FINANCIAL IMPACT**

Cingular Wireless has agreed to pay the City approximately \$12,000 per year with a three (3) percent annual Consumer Price Index (CPI) adjustment to co-locate on the Edison towers. Metro PCS has agreed to pay the City \$7,500 per year or 50 percent of any rent or fee received from the co-locator, whichever is greater (plus future increases) to co-locate on the City well site at 10500 Richardson Street. Additionally, Metro PCS also agreed to a similar deal to co-locate on the City Corp Yard site. None of the sites are required to pay development impact fees.

Respectfully submitted,



Allan Penafiorida  
Planning Technician

### **ATTACHMENTS**

- A – Site Lease Agreement with Cingular**
- B – Site Lease Agreement with Metro PCS for City well site**
- C – Site Lease Agreement with Metro PCS for City Corp Yard**

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# **Attachment A**

## **Site Lease Agreement with Cingular**

## COMMUNICATIONS SITE LICENSE AGREEMENT

THIS COMMUNICATIONS SITE LICENSE AGREEMENT ("Agreement") is entered into this 9<sup>th</sup> day of May 2006, by and among the City of Loma Linda, a municipal body ("Licensor"), Southern California Edison Company, a California corporation ("SCE"), and New Cingular Wireless PCS, LLC a Delaware limited liability company ("Carrier") (collectively, the "Parties") with reference to the facts set forth below:

### RECITALS

A. Licensor is the owner of that certain property located in the City of Loma Linda, County of San Bernardino, State of California as more particularly described in Exhibit A attached hereto ("Property").

B. SCE is the owner of an easement and right of way for electrical transmission and communication purposes, which encumbers all, or a part of the Property pursuant to that certain grant of easement to SCE, dated August 5, 1966 and recorded on August 5, 1966, in Book 6674, page 969, as Instrument No. 100 of Official Records in the Office of the County Recorder of San Bernardino County, State of California, a copy of which is attached hereto as Exhibit B ("Easement"). Nothing in this Agreement shall limit, modify or degrade SCE's rights under the Easement.

C. SCE has constructed, among other facilities, electric transmission towers and/or poles within the Easement ("Electric Facilities").

D. Carrier is a provider of communication services which require the transmission and reception of radio communication signals on various frequencies.

E. Carrier desires to install communication equipment on the Electric Facilities and on the surface of the Easement in furtherance of the provision of communication services ("Carrier's Equipment").

F. SCE and Carrier have entered into that certain Master Agreement dated October 11, 2001, and that certain Standard Agreement No. \_\_\_\_\_, dated \_\_\_\_\_ ("Standard Agreement") (the Master Agreement and Standard Agreement are collectively referred to herein as the "Master Agreement"), the terms of which govern Carrier's installation of Carrier's Equipment on the Electric Facilities and on the surface of the Easement. Solely as between Carrier and SCE, and except as provided in Section 10.b. of this Agreement, in the event of any conflict between the terms or conditions of the Master Agreement and this Agreement, the Master Agreement shall govern.

G. Licensor is willing to (i) permit Carrier to install, operate and maintain Carrier's Equipment on the surface of the Easement and (ii) permit SCE to allow Carrier to install, operate and maintain Carrier's Equipment on the Electric Facilities.

NOW THEREFORE, in consideration of the above-referenced facts, the covenants of the Parties contained in this Agreement and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. License. Licensors hereby issues a license to SCE and Carrier to permit the installation, maintenance and operation of Carrier's Equipment on the Easement in the location depicted in Exhibit C attached hereto ("Site") and on the Electric Facilities along with the right to access the Easement and install utilities necessary to operate Carrier's Equipment.

2. Use. The Site may be used by Carrier for any lawfully permitted and licensed activity in connection with the provision of communication services including the transmission and reception of radio communication signals on various frequencies and the construction, maintenance, and operation of related communication facilities. Licensors agrees to cooperate with Carrier, at Carrier's sole expense, in making application for and obtaining all licenses, permits and any other necessary approvals that may be required for Carrier's intended use of the Site.

3. Conditions Precedent. This Agreement is conditioned upon Carrier receiving a license, or already having a license, from the Federal Communications Commission ("FCC") and all applicable governmental permits and approvals enabling Carrier to construct and operate Carrier's Equipment on the Site.

4. Term. The term of this Agreement ("Term") shall be five (5) years commencing on the earlier of (i) the first day of the month following written notice to Licensors by Carrier of Carrier's intent to commence construction of Carrier's Equipment on the Site, or (ii) the twelve month anniversary of the date first written above ("Commencement Date"). SCE shall have the right to extend the Term of this Agreement for three (3) additional five (5)-year terms (each a "Renewal Term") on the same terms and conditions contained herein. This Agreement shall automatically be extended for each successive Renewal Term unless SCE notifies Licensors in writing of SCE's intention not to extend this Agreement at least sixty (60) days prior to the expiration of the Term or the then current Renewal Term. This Agreement shall not be revocable and may not be terminated except as expressly provided herein.

5      License Fee.

a.      Licensors and Carrier agree that, upon the Commencement Date, and on every anniversary of the Commencement Date during the Term and each Renewal Term ("Payment Date"), Carrier shall pay Licensors an annual license fee in the amount of Twelve Thousand and 00/100 Dollars (\$12,000.00) ("License Fee") adjusted in accordance with paragraph (b) below.

In the event this Agreement is terminated in accordance with Section 10a (iii) or (iv) on any date other than an annual Payment Date, Licensors agree to refund the Carrier the prorata portion of the annual license paid for the portion of the Term remaining between the termination date and what would have been the next annual Payment Date.

b.      CPI Adjustment – Licensors and Carrier agree that the License Fee shall be adjusted annually on each Payment Date beginning on the first anniversary of the Commencement Date by the lesser of: (a) three percent (3%) or (b) the percentage change in the most recent published Consumer Price Index (1982-84=100) Urban Wage Earners and Clerical Workers – Los Angeles, Anaheim, Riverside ("Index") compared to the Index published twelve (12) months earlier. If the Index is discontinued or changed so that it is impossible to obtain a continuous measurement of price changes, the Index shall be replaced with a comparable government index.

6.      Improvements.

a.      During the Term or any Renewal Term, Carrier and SCE shall have the right, at no cost to Licensors, to construct, maintain and operate Carrier's Equipment and other necessary related facilities, which shall include, but shall not be limited to, an equipment shelter, cabinets, equipment racks, cables, conduits, generators, radios, antennae, antenna support structures (collectively known as "Communication Facilities") as generally shown on said Exhibit D attached hereto, on the Site and on the Electric Facilities.

b.      In connection therewith, SCE and/or Carrier shall have the right to do all work necessary to prepare, add to, maintain and alter the Site and the Electric Facilities for the Communication Facilities including the installation of utility lines and transmission lines connecting antennas to transmitters and receivers. Licensors shall approve plans and specifications for such work, in writing, before work may begin. Such approval shall not be unreasonably withheld, conditioned or delayed. All construction and installation work shall be performed at no cost to Licensors by licensed and bonded contractors in a good and workmanlike manner and shall not materially interfere with Licensors's then existing facilities and operations on the Site. Title to the Communication Facilities shall be held by SCE and/or Carrier.

c.      Within ninety (90) days following the expiration or earlier termination of this Agreement, SCE and/or Carrier shall remove, at no cost to Licensors, all of Carrier's Equipment placed on the Site and the Electric Facilities and demolish and remove all foundations to three (3) feet below grade level, fill all excavations, return the surface to grade, and leave the Site in a neat and safe condition, free from any debris or hazards (reasonable wear and tear and

damages due to causes beyond the control or without the fault or neglect of SCE and/or Carrier excepted).

d. Carrier shall have the right to install utilities, at Carrier's sole expense, and to improve any existing utilities on or near the Site. Any encroachment necessary for such utility service will be at a location reasonably acceptable to Licensor and the servicing utility.

e. Carrier shall fully and promptly pay for all utilities furnished to the Site for its use throughout the Term and any Renewal Term, and all other costs and expenses incurred by Carrier in connection with Carrier's use, operation, and maintenance of the Site.

7. Access:

a. Carrier shall have the right but not the obligation, to enter the Site prior to the Commencement Date, for the purpose of making engineering surveys, inspections, and tests, for the purpose of determining the suitability of the Site for Carrier's Equipment. During any pre-construction and construction work, Carrier will: (i) have insurance as set forth in Section 13; (ii) notify Licensor of any proposed construction work; and (iii) coordinate the scheduling of same with Licensor. If Carrier determines that the Site is unsuitable for Carrier's contemplated use, then Carrier and SCE will notify Licensor and this Agreement will terminate in accordance with Section 10a (ii). Licensor does not warrant or guarantee the suitability of the Site for Carrier's intended use.

b. Licensor shall provide to SCE and Carrier and their employees, agents and subcontractors access to the Site twenty-four (24) hours a day, seven (7) days a week, at no charge. Licensor represents and warrants it has full rights of ingress and egress to the Site, and hereby grants such rights to SCE and Carrier to the extent required to construct, maintain, install and operate the Communication Facilities.

8. Interference:

a. Carrier shall operate Carrier's Equipment in a manner that will not cause signal interference to communication equipment operated by Licensor and other previously authorized users of the Site, as such equipment is configured at the time Carrier's Equipment is installed. In the event such signal interference should occur, all costs to remedy the interference shall be borne by Carrier. Any communication system operations, operating in the same manner as of the time of installation of Carrier's Equipment, shall not be deemed interference to Carrier. All operations by Carrier shall be in compliance with all federal, state and local non-interference regulations including, but not limited to, those of the FCC.

b. Carrier shall provide initial proof of compliance with original transmission tolerance and interference analysis by a certification through an independent source.

c. Subsequent to the installation of the Communication Facilities, Licensor shall not permit the use of the Site in a manner which interferes with the communications operations of Carrier as described in Section 2 above.

d. The parties acknowledge that any continuing interference to Carrier's communication system operations will cause injury to Carrier and SCE, and therefore, Carrier and SCE shall each have the right to bring action to enjoin such interference and/or terminate the Agreement immediately upon notice to Licensor.

9. Taxes: This Agreement may create a taxable property interest in the Site. Licensor shall not be responsible for any personal property taxes, possessory interest taxes and assessments attributable to the Facilities levied by any legal authority as a result of this Agreement.

10. Termination:

a. This Agreement may be terminated without further liability on thirty (30) days prior written notice as follows:

- (i) By any Party upon a default of any covenant, condition or term herein by any other Party, which default is not cured within thirty (30) days of receipt of written notice of default. No default will be deemed to exist if the Party claimed to be in default has commenced to cure such default within such period and provided that such efforts are brought to completion with reasonable diligence; or
- (ii) By SCE prior to Commencement Date for any reason or for no reason, provided SCE delivers written notice of early termination to Licensor no later than 30 days prior to the Commencement Date and forfeits and/or pays to Licensor \$1,000 for reimbursement of costs of document preparation and administrative time associated with this Agreement; or
- (iii) By SCE after the Commencement Date for any reason or for no reason, provided SCE delivers written notice of early termination to Licensor no later than sixty (60) days prior to termination; or
- (iv) By Licensor, upon thirty (30) days written notice to Carrier, should the signal from Carrier's Equipment materially interfere, as objectively determined by a qualified independent engineer, with Licensor's normal and customary operation and maintenance of its facilities in place and as operating on the Commencement Date, provided, however, Licensor has first given Carrier written notice of such interference and Carrier is unable to correct or cease such interference within thirty (30) days after receipt of written notice of such interference.

b. Notwithstanding anything to the contrary in the Master Agreement or Standard Agreement, Carrier and SCE agree that the Standard Agreement shall automatically terminate upon termination of this Agreement.



11. Destruction or Condemnation:

a. If the Site or the Communication Facilities are damaged, destroyed or condemned, Carrier and SCE may elect to terminate this Agreement as of the date of the damage, destruction or condemnation by giving notice to Licensor no more than forty-five (45) days following the date of such damage, destruction or condemnation, and all rights and obligations of the Parties that do not survive the termination of this Agreement shall be deemed to cease as of the date of the damage, destruction or condemnation. If Carrier and SCE choose not to terminate this Agreement, the License Fee shall be reduced or abated in proportion to the actual reduction or abatement of use of the Site.

b. In any condemnation proceeding, each Party shall be entitled to make a claim against the condemning authority for just compensation.

12. Assignment and Subletting:

a. Licensor may assign or otherwise transfer its interest in this Agreement upon written notice to SCE and Carrier, subject to the assignee or transferee assuming all of Licensor's obligations herein.

b. SCE and/or Carrier may assign, sublet or otherwise transfer all or any part of their interest in this Agreement or in the Site or the Communication Facilities to any of their affiliates subject to any such assignee or transferee agreeing in writing to assume and perform all of the terms and conditions of this Agreement on SCE's or Carrier's part to be performed. Any other assignment shall require Licensor's prior written approval, which approval shall not be unreasonably withheld.

13. Insurance: At all times during the term of this Agreement, Carrier shall maintain and shall require any contractors and subcontractors, who do any work on or at the Site, to maintain insurance coverage as described below:

a. Workers' Compensation Insurance with statutory limits, in accordance with the laws of the State of California, and Employer's Liability Insurance with limits of not less than one million dollars (\$1,000,000.00).

b. Commercial General Liability Coverage, including owners and contractor's protective liability, product/completed operations liability, and contractual liability, with a combined single limit of two million dollars (\$2,000,000.00) each occurrence. Such insurance shall (i) name Licensor, its officers, agents, and employees as additional insureds, but only for Carrier's negligent acts or omissions; (ii) be primary for all purposes; and (iii) contain standard cross-liability provisions.

c. Commercial Automobile Insurance Coverage with a combined single limit of one million dollars (\$1,000,000.00) each occurrence. Such insurance shall cover liability arising out of the use of owned, non-owned, and hired automobiles. Such insurance shall name Licensor, its officers, agents, and employees as additional insured.

d. The coverages and limits may be obtained and maintained through any combination of primary and excess or umbrella liability insurance or by endorsement to any master policy of insurance.

e. Carrier shall provide Licensor with certificates of insurance coverage prior to commencement of any installation or other work at the Site. All insurance policies required of Carrier hereunder shall provide that Licensor shall receive not less than thirty (30) days' written notice prior to the cancellation or reduction in coverage of such insurance.

Carrier may meet the requirements of this Section by self insurance. If Carrier elects self insurance, Carrier shall provide Licensor annually with a certificate of self insurance from the State of California.

14. Indemnification:

a. Carrier shall indemnify and hold harmless Licensor, its parent company, affiliates, directors, shareholders, invitees, employees, agents, contractors, successors and assigns, from any and all costs, liabilities, claims and expenses, including those from death or injury to any person or from a loss or damage to any real, personal or other property, arising from a breach of any obligation, duty, representation or warranty contained in this Agreement or from any act or omission by Carrier, or by any of Carrier's agents, contractors, affiliates, invitees or employees related hereto.

b. The obligations of Carrier under this Section 14 shall arise at such time, if any, that any claim is made, or loss is incurred by Licensor, and the entry of judgment or the litigation of any claim shall not be a condition precedent to the obligations of Carrier hereunder.

c. Carrier shall promptly notify Licensor of the existence of any matters to which Carrier's indemnity obligations apply. Upon demand by Licensor, Carrier shall defend at its own expense with mutually acceptable counsel any such matter; provided that Licensor shall at all times also have the right to fully participate in the defense and consent to any settlement or compromise.

d. IN NO EVENT SHALL ANY PARTY BE LIABLE TO ANY OTHER PARTY TO THIS AGREEMENT FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES (INCLUDING LOSS OF THE OTHER PARTY'S CUSTOMERS OR GOOD WILL, OR LOST REVENUE OR PROFITS), FOR ANY CAUSE OF ACTION, WHETHER IN CONTRACT OR TORT, ARISING IN ANY MANNER FROM THIS AGREEMENT OR THE PERFORMANCE OR NON-PERFORMANCE OF OBLIGATIONS UNDER THIS AGREEMENT, REGARDLESS OF THE CAUSE OR FORESEEABILITY THEREOF. FURTHER, THE AMOUNT OF LICENSOR'S AGGREGATE LIABILITY OR DAMAGES SHALL NOT EXCEED THE TOTAL AMOUNT OF THE LICENSE FEES RECEIVED BY LICENSOR.

e. Unless caused by Licensor's gross negligence or willful misconduct, Licensor shall not be liable for any costs, liabilities, claims and expenses, including death or injury to any person, or any loss or damage to any real, personal or other property of Carrier.

15. Safety and Environmental Protection: Carrier shall operate and maintain the Site so as to avoid injury or damage to any person or property.

In carrying out its work, the Carrier shall at all times, exercise all necessary precautions for the safety and environmental protection of Site, and be in compliance with all federal, state and local statutory and regulatory requirements including those of the State of California, Division of Industrial Relations (Cal/OSHA), Cal/EPA, US/EPA and the U.S. Department of Transportation.

The Carrier and its agents, contractors and employees, shall not use the Site to generate, manufacture, refine, transport, treat, store, handle, recycle, release or dispose of any hazardous material, other than as reasonably necessary for Carrier's activities under this Agreement. The term "hazardous material" means any hazardous substance, material or waste, including but not limited to those listed in 49 CFR 172.101 (U.S. Department of Transportation), the Cal/EPA Chemical Lists of lists or petroleum products and their derivatives. However, this shall not apply to the use of petroleum products and related substances incidental to operation of motorized equipment and vehicles whose operation on the Site is contemplated by this Agreement.

Carrier shall immediately notify the Licensor in writing upon becoming aware of any release of hazardous material, violation of any environmental law or actions brought by third parties against Carrier alleging environmental damage.

a. Carrier shall post a sign in letters no greater than ½ inch in height permanently affixed to Carrier's Equipment that identifies the responsible party to notify in case of emergency or maintenance.

b. Licensor represents that neither Licensor nor, to Licensor's knowledge, any third party, has used, generated, stored, treated or disposed of hazardous materials, as defined above, on the Site.

16. Notices: Any notice, demand or payment required to be given herein shall be made by certified or registered mail, return receipt requested, or reliable overnight courier to the address of the respective parties set forth below:

Licensor:

City of Loma Linda  
25541 Barton Rd.  
Loma Linda, CA 92354  
PH# \_\_\_\_\_

FAX# \_\_\_\_\_

SCE:

Southern California Edison Co.  
2244 Walnut Grove Avenue  
Rosemead, CA 91770  
PH# 626/302-4002

FAX# 626/302-1429

Carrier:

Cingular Wireless  
6100 Atlantic Boulevard  
Mail Code GAN02  
Norcross, GA 30071

Attn: Network Real Estate  
Administration

With copy to:  
Cingular Wireless  
2345 Michelson Dr Suite

100  
Irvine, CA 92612  
Attn: Legal Department

17. Attorney's Fees:

In the event legal action by any Party is brought to enforce any term of this Agreement or to recover damages for any breach thereof, or to determine any rights of the Parties under this Agreement, the prevailing Party in such actions may recover reasonable attorneys' fees to be fixed by the court.

18. Miscellaneous:

a. This Agreement constitutes the entire agreement and understanding among the Parties, and supersedes all offers, negotiations and other agreements concerning the subject matter contained herein. There are no representations or understandings of any kind not set forth in this Agreement. Any amendments to this Agreement must be in writing and executed by each Party.

b. If any provision of this Agreement is invalid or unenforceable with respect to any Party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

c. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees of the respective Parties.

d. This Agreement shall be interpreted in accordance with the laws of the State of California.

e. In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Agreement, such party shall not unreasonably delay or withhold its approval or consent.

f. Carrier shall give all notices required by law and comply with all laws, ordinances, rules and regulations pertaining to the conduct of its activities on the Site. Carrier shall be liable for all violations of the law arising in connection with its activities under this Agreement.

g. All Exhibits attached hereto are material parts of this Agreement.

h. This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original.

**[Signatures on next page]**

IN WITNESS THEREOF, the parties have executed this Agreement as of the date first above written.

LICENSOR:

CITY OF LOMA LINDA

By \_\_\_\_\_  
Dennis R. Holloway  
City Manager

Date: \_\_\_\_\_

SCE:

SOUTHERN CALIFORNIA EDISON CO., a California corporation

By \_\_\_\_\_  
C. Kelly Kraushaar  
Manager - Carrier Solutions  
Corporate Real Estate Department

Date: \_\_\_\_\_

CARRIER:

New Cingular Wireless, LLC,  
a Delaware limited liability company

Name \_\_\_\_\_  
Emily Vaughn  
Deployment Manager.

Date \_\_\_\_\_

# **Attachment B**

**Site Lease Agreement with Metro PCS  
(City well site)**

**SECOND AMENDMENT TO  
COMMUNICATIONS SITE GROUND LEASE**

This Second Amendment to Communications Site Ground Lease ("Amendment") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2006 ("Effective Date"), by and between STC One, LLC, assignee of Sprint PCS Assets, LLC (f/k/a Cox PCS Assets LLC) ("Lessee") by and through its attorney in fact, Global Signal Acquisitions II LLC and the City of Loma Linda (collectively, the "Lessor").

**RECITALS**

WHEREAS, Lessee leases from Lessor a portion of certain real property (the "Lease Premises" or the "Site") located at 10500 Richardson Street, Loma Linda (San Bernardino), CA (the "Property") pursuant to that certain Communications Site Ground Lease and as amended pursuant to that certain Amendment to Communications Site Ground Lease (the "Agreement"); and

WHEREAS, Lessee and Lessor desire to amend the Agreement on the terms and conditions contained herein to enable Metro PCS ("Co-Locator") to co-locate with Lessee on the Site, on the terms and conditions set forth in the Co-Location Agreement attached hereto as Exhibit A.

**OPERATIVE PROVISIONS**

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency which is hereby acknowledged, the parties hereby agree as follows:

1. Commencing on the first day of the first month following the earlier of, but no later than the earlier of (a) the date that Co-Locator commences installation of its equipment on the tower at the Site; or (b) October 1, 2006 through the anniversary of the commencement date of the Agreement, Lessee shall pay to Lessor as additional rent (partial month and year to be prorated) the sum of \$750 per month or 50% of any rent or fee received from the co-locator, whichever is greater, (plus future increases). Thereafter the additional rent will be due and payable and will escalate pursuant to the terms of the Agreement. In the event Global fails to enter into a Co-Location Agreement within 90 days following the Effective Date or upon the termination of the Co-Location Agreement, this additional rent shall cease.

2. Lessor does hereby authorize Lessee and its employees, representatives, agents and consultants to prepare, execute, submit, file and present on behalf of Lessor building, permitting, zoning or land-use applications with the appropriate local, state and/or federal agencies necessary to obtain land use changes, special exceptions, zoning variances, conditional use permits, special use permits, administrative permits, construction permits, operation permits and/or building permits. Lessor understands that any such applications and/or the satisfaction of any requirements thereof may require Lessor's cooperation, which Lessor hereby agrees to provide. Lessor shall not do or permit anything that will

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**Deleted:** Nextel of California Inc., d/b/a Nextel Communications and Nextwave Broadband, Inc.

**Deleted:** (collectively, "Co-Locators")

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interfere with or negate any special use permit or approval pertaining to the Site or cause any tower on the Site to be in nonconformance with applicable local, state, or federal laws. Lessor shall cooperate with Lessee in any effort by Lessee to obtain certificates, permits, licenses and other approvals that may be required by any governmental authorities. Lessor agrees to execute any necessary applications, consents or other documents as may be reasonably necessary for Lessee to apply for and obtain the proper zoning approvals required to use and maintain the Site and the tower site.

3. The parties hereby agree and acknowledge that all Notices provided pursuant to the Agreement shall also be sent to the following address:

If to Lessee:

STC One, LLC  
C/o Global Signal Acquisitions II LLC  
Attn: Lease Administration  
301 North Cattlemen Drive, Suite 300  
Sarasota, FL 34232

4. Any further assignment, co-location or sublease by the Lessee or by the Co-Locator, and any amendment of any co-location agreement shall be subject to the Lessor's prior review and written approval, and may be subject to additional rent.

5. The Co-Locator shall be bound by all of the terms of the ground lease, as amended, including all insurance (with the Lessor as additional insured) and indemnity provisions.

6. All capitalized terms not defined herein shall have the meanings given such terms in the Agreement. Except as explicitly amended hereby, the Agreement remains in full force and effect and is hereby restated, ratified and confirmed in accordance with its original terms, as amended hereby.

**SIGNATURE PAGES TO FOLLOW**

**Deleted:** The effective date ("Effective Date") of this First Amendment shall be the date that Cox enters into an agreement with one of the Co-Locators whereby Cox grants to Co-Locator the right to co-locate on the Site (the "Co-Location Agreement").¶

¶ Landlord and Cox hereby agree that Cox may sublease a portion of the Site to each Co-Locator for the purpose of installing, operating, and maintaining communications antennas and associated communications equipment, cables and shelters. Landlord hereby further grants to each Co-Locator rights of ingress and egress to the Site in the same manner and to the same extent as granted and conveyed to Cox under the Agreement, as hereby amended, including, but not limited to, reasonable access to and the right to install, maintain and modify electric and telephone utility service to the Site. Landlord hereby consents and agrees to cooperate with Co-Locator in obtaining any necessary governmental or municipal permits and/or licenses to construct and operate at the Site.¶

¶ So long as a Co-Locator subleases a portion of the Site from Cox, within thirty (30) days of Cox's receipt from Co-Locator of each payment of gross sublease rent, Cox will pay Landlord \$150.00 per month per Co-Locator ("Additional Rent") which amount shall be in addition to rent and any other sums due Landlord pursuant to the Agreement. ¶

¶ Additional Rent will commence on the first day of the month following the earlier of: (a) the date that a Co-Locator commences construction on the Site or (b) the date which is 90 days from the Effective Date for such Co-Locator (partial month to be prorated). The Additional rent will escalate at the same time and in the same manner as described in the Agreement. Provided however that upon termination of a Co-Location Agreement between Cox and Co-Locator under the terms of the agreement between same, Cox's obligation to pay Additional Rent as outlined herein for such particular Co-Locator shall cease.¶

¶ If a Co-Locator and Cox have not entered into a Co-Location Agreement ninety days following the Execution Date, Cox shall be relieved from paying Additional Rent for such Co-Locator as outlined herein. If Cox has not entered into a Co-Location Agreement with either Co-Locator within ninety days following the Execution Date, Cox may terminate this ¶1

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IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year first above written.

**LESSEE:**  
**STC One, LLC**  
**By: Global Signal Acquisitions II LLC**  
**Its: Attorney in Fact**  
**By: Global Signal Services LLC,**  
**its Manager**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
As Its: \_\_\_\_\_  
[Seal]

STATE OF FLORIDA  
COUNTY OF SARASOTA

I, a Notary Public of the County and State aforesaid, certify that Jason Catalini personally appeared before me this day and acknowledged that he is the Senior Director of Real Estate of Global Signal Services LLC, and is personally known to me or produced \_\_\_\_\_ as identification, and who acknowledged the execution of the foregoing instrument.

WITNESS my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2006

\_\_\_\_\_  
Notary Public – State of Florida  
Printed Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**LESSOR:**  
**The City of Loma Linda**

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of \_\_\_\_\_

} ss

I, \_\_\_\_\_, California, \_\_\_\_\_

personally appeared

to me, \_\_\_\_\_

☐ personally known to me  
proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) have  
submitted to the above instrument and  
acknowledged to me that he/she/they executed  
the same in his/her/their alleged  
capacity(ies), and that by his/her/their  
signature(s) on the instrument the person(s), or  
the entity upon behalf of which the person(s)  
acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
My Comm. No. \_\_\_\_\_

## OPTIONAL

(Attach and reference to this document by law. A copy of this document is being made for the document and each of the  
instrument's parties and maintained in the file of this document.)

### Description of Attached Document

Title or type of document: \_\_\_\_\_

Document's Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) (other than the instrument's Acknowledger): \_\_\_\_\_

### Capacity(ies) Claimed by Signer

Signer's Name: \_\_\_\_\_

☐ Individual

☐ One or more of the following: \_\_\_\_\_

☐ Partner ☐ Limited ☐ General

☐ Attorney-in-Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other: \_\_\_\_\_

Signer's Relationship: \_\_\_\_\_



The effective date ("Effective Date") of this First Amendment shall be the date that Cox enters into an agreement with one of the Co-Locators whereby Cox grants to Co-Locator the right to co-locate on the Site (the "Co-Location Agreement").

Landlord and Cox hereby agree that Cox may sublease a portion of the Site to each Co-Locator for the purpose of installing, operating, and maintaining communications antennas and associated communications equipment, cables and shelters. Landlord hereby further grants to each Co-Locator rights of ingress and egress to the Site in the same manner and to the same extent as granted and conveyed to Cox under the Agreement, as hereby amended, including, but not limited to, reasonable access to and the right to install, maintain and modify electric and telephone utility service to the Site. Landlord hereby consents and agrees to cooperate with Co-Locator in obtaining any necessary governmental or municipal permits and/or licenses to construct and operate at the Site.

So long as a Co-Locator subleases a portion of the Site from Cox, within thirty (30) days of Cox's receipt from Co-Locator of each payment of gross sublease rent, Cox will pay Landlord \$150.00 per month per Co-Locator ("Additional Rent") which amount shall be in addition to rent and any other sums due Landlord pursuant to the Agreement.

Additional Rent will commence on the first day of the month following the earlier of: (a) the date that a Co-Locator commences construction on the Site or (b) the date which is 90 days from the Effective Date for such Co-Locator (partial month to be prorated). The Additional rent will escalate at the same time and in the same manner as described in the Agreement. Provided however that upon termination of a Co-Location Agreement between Cox and Co-Locator under the terms of the agreement between same, Cox's obligation to pay Additional Rent as outlined herein for such particular Co-Locator shall cease.

If a Co-Locator and Cox have not entered into a Co-Location Agreement ninety days following the Execution Date, Cox shall be relieved from paying Additional Rent for such Co-Locator as outlined herein. If Cox has not entered into a Co-Location Agreement with either Co-Locator within ninety days following the Execution Date, Cox may terminate this First Amendment upon written notice of the same to Landlord.

# **Attachment C**

## **Site Lease Agreement with Metro PCS (City Corp Yard)**

## AMENDMENT TO SITE AGREEMENT

This Amendment to Site Agreement ("Amendment") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2006 ("Effective Date"), by and between Sprint PCS Assets, LLC ("Sprint PCS") and the City of Loma Linda ("Owner").

### RECITALS

WHEREAS, Sprint PCS leases from Owner a portion of certain real property (the "Lease Premises" or the "Site") located at 26000 Barton Road, Loma Linda (San Bernardino), CA (the "Property") pursuant to that certain Site Agreement dated March 8, 2004 (the "Agreement"); and

WHEREAS, Sprint PCS and Owner desire to amend the Agreement on the terms and conditions contained herein to enable Metro PCS ("Co-Locator") to co-locate with Sprint PCS on the Site, on the terms and conditions set forth in the Co-Location Agreement attached hereto as Exhibit A.

### OPERATIVE PROVISIONS

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency which is hereby acknowledged, the parties hereby agree as follows:

1. Commencing on the first day of the first month following the earlier of, but no later than the earlier of (a) the date that Co-Locator commences installation of its equipment on the tower at the Site; or (b) October 1, 2006 through the anniversary of the commencement date of the Agreement, Sprint PCS shall pay to Owner as additional rent (partial month and year to be prorated) the sum of \$750 per month or 50% of any rent or fee received from the Co-Locator, whichever is greater, (plus future increases). Thereafter the additional rent will be due and payable and will escalate pursuant to the terms of the Agreement. In the event Global fails to enter into a Co-Location Agreement within 90 days following the Effective Date or upon the termination of the Co-Location Agreement, this additional rent shall cease.

2. Owner does hereby authorize Sprint PCS and its employees, representatives, agents and consultants to prepare, execute, submit, file and present on behalf of Owner building, permitting, zoning or land-use applications with the appropriate local, state and/or federal agencies necessary to obtain land use changes, special exceptions, zoning variances, conditional use permits, special use permits, administrative permits, construction permits, operation permits and/or building permits. Owner understands that any such applications and/or the satisfaction of any requirements thereof may require Owner's cooperation, which Owner hereby agrees to provide. Owner shall not do or permit anything that will interfere with or negate any special use permit or approval pertaining to the Site or cause any tower on the Site to be in nonconformance with applicable local, state, or federal laws. Owner shall cooperate with Sprint PCS in any effort by Sprint PCS to obtain certificates, permits, licenses and other approvals that may be required by any governmental authorities. Owner agrees to execute any necessary applications, consents or other documents as may be reasonably necessary for Sprint PCS to apply for and obtain the proper zoning approvals required to use and maintain the Site and the tower site.

3. The parties hereby agree and acknowledge that all Notices provided pursuant to the Agreement shall also be sent to the following address:

If to Sprint PCS:

Sprint Amendment (Co-Location)

Deleted: Cox

Deleted: Nextel of California Inc. d/b/a Nextel Communications and Nextwave Broadband, Inc.

Deleted: (collectively, "Co-Locators")

Deleted: Cox

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Deleted: The effective date ("Effective Date") of this First Amendment shall be the date that Cox enters into an agreement with one of the Co-Locators whereby Cox grants to Co-Locator the right to co-locate on the Site (the "Co-Location Agreement").¶

¶ Landlord and Cox hereby agree that Cox may sublease a portion of the Site to each Co-Locator for the purpose of installing, operating, and maintaining communications antennas and associated communications equipment, cables and shelters. Landlord hereby further grants to each Co-Locator rights of ingress and egress to the Site in the same manner and to the same extent as granted and conveyed to Cox under the Agreement, as hereby amended, including, but not limited to, reasonable access to and the right to install, maintain and modify electric and telephone utility service to the Site. Landlord hereby consents and agrees to cooperate with Co-Locator in obtaining any necessary governmental or municipal permits and/or licenses to construct and operate at the Site.¶

¶ So long as a Co-Locator subleases a portion of the Site from Cox, within thirty (30) days of Cox's receipt from Co-Locator of each payment of gross sublease rent, Cox will pay Landlord \$150.00 per month per Co-Locator ("Additional Rent") which amount shall be in addition to rent and any other sums due Landlord pursuant to the Agreement.¶

¶ Additional Rent will commence on the first day of the month following the earlier of: (a) the date that a Co-Locator commences construction on the Site or (b) the date which is 90 days from the Effective Date for such Co-Locator (partial month to be prorated). The Additional rent will escalate at the same time and in the same manner as described in the Agreement. Provided however that upon termination of a Co-Location Agreement between Cox and Co-Locator under the terms of the agreement between same, Cox's obligation to pay Additional Rent as outlined herein for such particular Co-Locator shall cease.¶

¶ If a Co-Locator and Cox have not entered into a Co-Location Agreement ninety days following the Execution Date, Cox shall be relieved from paying Additional Rent for such Co-Locator as outlined herein. If Cox has not entered into a Co-Location Agreement with either Co-Locator, Cox shall be relieved from paying Additional Rent for such Co-Locator as outlined herein. [1]

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Deleted: Cox

Michael A Curry  
Sprint Sites USA  
6120 Powers Ferry Road NW, Suite 200  
Atlanta GA 30339

4. Any further assignment, co-location or sublease by the Sprint PCS or by the Co-Locator, and any amendment of any co-location agreement shall be subject to the Owner's prior review and written approval, and may be subject to additional rent.

5. The Co-Locator shall be bound by all of the terms of the Site Agreement including all insurance (with the Owner as additional insured) and indemnity provisions.

6. All capitalized terms not defined herein shall have the meanings given such terms in the Agreement. Except as explicitly amended hereby, the Agreement remains in full force and effect and is hereby restated, ratified and confirmed in accordance with its original terms, as amended hereby.

**SIGNATURE PAGES TO FOLLOW**

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year first above written.

**SPRINT PCS:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

As Its: \_\_\_\_\_



**OWNER:**  
**The City of Loma Linda**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

## EXHIBIT A

Sprint Amendment (Co-Location)

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Landlord and Cox hereby agree that Cox may sublease a portion of the Site to each Co-Locator for the purpose of installing, operating, and maintaining communications antennas and associated communications equipment, cables and shelters. Landlord hereby further grants to each Co-Locator rights of ingress and egress to the Site in the same manner and to the same extent as granted and conveyed to Cox under the Agreement, as hereby amended, including, but not limited to, reasonable access to and the right to install, maintain and modify electric and telephone utility service to the Site. Landlord hereby consents and agrees to cooperate with Co-Locator in obtaining any necessary governmental or municipal permits and/or licenses to construct and operate at the Site.

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